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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA Commercial Mortgage Company,

Debtor.

Case No. BK-S-06-10725-LBR
Chapter 11

**DECLARATION OF GEOFFREY
BERMAN IN SUPPORT OF
OMNIBUS OBJECTIONS OF
USACM TRUST TO PROOFS OF
CLAIM BASED UPON
INVESTMENT IN THE SVRB 2.325
LOAN**

Hearing Date: September 30, 2011
Hearing Time: 9:30 a.m.
Estimated Time for Hearing: 10 minutes

I, Geoffrey L. Berman, declare under penalty of perjury:

1. I am an adult person competent to testify in court.

2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.

3. I am the Trustee of the USACM Liquidating Trust ("USACM Trust"), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.

4. USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to a borrower identified as “Rio Bravo Industrial Development, LLC.” A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. The Offer Sheet stated that the borrower was a joint venture between USA Investment partners and Robert Russell.¹ The total loan amount proposed was \$2,325,000. The Offer Sheet noted that the investment would be secured by a “subordinated deed of trust” on approximately 28 acres of land zoned for industrial development and a 50,000 square foot industrial building located at Rio Bravo and Prince Street off of Interstate 25 near the Albuquerque, New Mexico airport. The Offer Sheet further stated that the loan to value was approximately 93% based on an April 13, 2005 opinion of value letter from CB Richard Ellis, which valued the land at \$3.5 per square foot, with a sale value for the building of \$3,500,000. Pursuant to the Offer Sheet, an appraisal update for the land was in process.² The loan was intended to be used “to repay existing borrowers partners and to begin the development process for the remaining phases” of the project, which included an eventual build out of 200,000 square feet of industrial warehouse space.

5. On April 27, 2005, the Borrower made and delivered to various lenders, including the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by Deed of Trust,” in the amount of \$1,900,000 (the “Note”) and a Loan Agreement. The Loan Agreement and Note provided for an initial loan of \$1,900,000, with potential subsequent advances up to \$2,325,000. The Note was secured by a “Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Second Position)” from Borrower in favor

¹ The loan was eventually made to a different entity, SVRB Investments, LLC, but that entity is also a joint venture between Robert Russell and USA IP pursuant to the Arizona Corporation Commission website.

² The Trustee has not been able to locate a copy of the appraisal or the broker opinion of value.

1 of the Direct Lenders that was recorded in the official records of Bernalillo County, New
2 Mexico on April 29, 2005 at Instrument Number 2005059762. The Loan Agreement
3 expressly provided that the Deed of Trust “may be subordinated “ to deeds of trust
4 securing a construction or development loan, provided that the amount of those loans does
5 not exceed 80% of the value of the property. The Loan Agreement also acknowledged
6 that the Deed of Trust was already subordinated to a first position deed of trust and further
7 acknowledged that any additional advances after the Note’s effective date could be used to
8 pay interest on the senior loan.

9 6. The Note was also supported by an Unconditional Guaranty executed by
10 Tom Hantges, Joseph Milanowski, and Robert Russell on April 27, 2005.

11 7. The USACM “Loan Summary” dated July 31, 2006 and filed in this case
12 shows that Borrower was “Performing” on the Note as of July 31, 2006. The USACM
13 “Loan Summary” dated February 28, 2007 and filed in this case shows that Borrower was
14 in “Interest Default” as of February 28, 2007. During this bankruptcy case through the
15 transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any
16 interim payments by the borrower in accordance with this Court’s orders.

17 8. Because the Borrower included USA Investment Partners L.P., an affiliate of
18 USACM, I believe there was the potential for a conflict of interest in the manner in which
19 USACM brokered and serviced this loan.

20 I declare under penalty of perjury that the foregoing is true and correct.

21 Dated: August 5, 2011

22 /s/ Geoffrey L. Berman

23 Geoffrey L. Berman

1 Copy of the foregoing mailed (without
2 Exhibits) by first class postage prepaid
3 U.S. Mail on August 5, 2011 to
4 All investors listed on Exhibit A Attached.

5 And to:

6 Platinum Properties 2
7 Attn: Todd Hansen
8 2801 Fairview Place, Suite 2
9 Greenwood, IN 46142

10 s/ Matt Burns
11 Matt Burns, Paralegal
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